CF0000064033

CA 2931/2

(1)

APPEAL PRISONER

No. 209/98 Name बंजामी बोदी

Father's Name लिदी Resident पुरदा थाना-बरहपुर

Age 40 वर्ष Sentenced to आजीवन कारावास 500/-on
या दो साल एक-चार साल

Under Section 302, 323, भा.द.वि by प्रथम अपर सत्र न्यायालय, भागलपुर

It is explained to the prisoner that if he states or wishes to be represented by a legal practitioner the Appellate Court will not proceed with the base for seven days unless the legal practitioner appears If the legal practitioner does not appear within seven days he may be heard at all if legal practitioner the court may proceed at once with the case and will not be obliged to give a bearing to any legal practitioner who should appear.

1. Date of application for copy of Judgement :-
2. Date of which copy received :- 12/98
3. Date on which appeal sent :- 12/98
4. Whether the prisoner wished to be represented or not :- Yes / No.

No. 209/98 Name बंजामी बोदी s/o लिदी

Continued in सर्किल (सेन्ट्रल) Jail भागलपुर

No. 1036 Dated 4.1.99

Forwarded to the CHIEF JUDICIAL MAGISTRATE

together with a copy of Judgement or order passed in the case for favour of transmission to the proper Applleate Court.

Superintendent
Superintendent, Central / Distt / Sub-Jail.

Date of receipt in C. J. M. Office.

Date of receipt of record to accompany.

Memo of Appeal of the Appellate Court.

No. dated

Forwarded to the

C. R. MAGISTRATE

Date of receipt in Applieate Court

XI-HC-22

(11)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... Criminal Appeal no. 2931/2000. ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Division Bench :
Hon'ble Shri Justice L.C. Bhadoo, J &
Hon'ble Shri Justice V.K. Shrivastava, J.

14.09.2006

Shri B.D. Badgaya, counsel for the appellant.

Shri U.N.S. Deo, Additional Public Prosecutor with Shri Akhil Mishra, Panel lawyer for the respondent/State.

Oral judgment dictated on Dais.

Per L.C. Bhadoo, J.

This appeal is directed against the judgment of conviction and order of sentence dated 11/12/1998 passed by Ist Additional Sessions Judge, Bastar, in Sessions Trial No. 55/98 whereby learned Additional Sessions Judge after holding the accused/appellant guilty for commission of offence under Sections 302 and 323 of the IPC, and sentenced him to undergo imprisonment for life and to pay a fine of Rs.500/-, in default of payment of fine to further undergo R.I. for two months and R.I for six months for commission of offence under Section 323 of the IPC.

The case of the prosecution, in brief, is that in the intervening night of 14th and 15th December, 1997, accused Banjami Boti, his wife Banjami Mitki along with their minor children were sleeping in their

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... Cr.A. No. 2931/2000 ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

house. Sister-in-law of the accused also happens to be in the house of the accused on the date of the incident. At about 11.30 p.m in the mid-night when sister-in-law of the accused heard the commotion, she woke up and saw that the accused was beating his wife Banjami Mitki with hands & fists. When she tried to intervene, accused/appellant slapped her and thereafter murdered his wife Banjami Mitki by pressing the neck of his wife with hands. Thereafter, accused left his house and went to the house of his brother Lakmu and informed him that his wife died. Therefore, in the morning Lakmu came to the house of the accused where sister-in-law of accused Banjami Boti was there in the house of the accused and on enquiry she informed him that the accused has committed the murder of his wife on which villagers and Sarpanch were informed.

The matter was reported by PW/1 Banjami Mitki to Police Station: Geedam, on which first information report (Ex.P/1) under Section 302 of the IPC was registered. Station House Officer, Gidam, reached the place of occurrence, prepared Panchnama (Ex.P/4) of the body of Banjami Mitki and prepared the site map of the place of occurrence (Ex.P/5). The body of Banjami Mitki was sent for postmortem examination to Primary Health Centre, Gidam, where Dr. Rajendra Sharma (PW/6) conducted postmortem and prepared the

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आदेश पत्रक

मामला क्रमांक Cr.A. 2931/2000 सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

postmortem report (Ex.P/10) in which he opined that cause of death was throttling due to shock and asphyxia.

After completition of investigation, charge-sheet was filed in the Court of Judicial Magistrate, First Class, Dantewada, who in turn committed the case to the Sessions Judge, Jagdalpur from where learned Sessions Judge received the case on transfer for trial.

The prosecution in order to establish charge against the accused examined nine witnesses. On the other hand, statement of the accused was recorded under Section 313 of the Cr.P.C., in which he denied the material appearing against him in the prosecution evidence and stated that he is innocent and he has been falsely implicated in the crime.

Learned Additional Sessions Judge, after hearing the arguments of Additional Public Prosecutor and counsel for the accused, convicted and sentenced the accused as mentioned in para one of this judgment.

We have heard Shri B.D. Badgaya, counsel for the accused/ appellant and Shri U.N.S. Deo, Additional Public Prosecutor with Shri Akhil Mishra, Panel Lawyer for the State.

The fact of homicidal death of Banjami Mitki has not been disputed by learned counsel for the appellant. Apart from that, from

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आदेश पत्रक

मामला क्रमांक Cr.A. 2931/2000 सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -4-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

the evidence of eye-witness PW/1 - Banjami Mitki as also the medical evidence of PW/6 Dr. Rajendra Sharma who conducted postmortem on the body of Banjai Mitki, it is established that Banjami Mitki was murdered by throttling. Therefore, it is established that the death of Banjami Mitki was homicidal in nature.

As far as involvement of the accused/appellant in the crime in question is concerned, eye-witness Banjami Mitki (PW/1) who is none-else than sister-in-law of the accused has stated in her evidence that on the fateful day she came to the market, remained there upto evening and in the evening she went to the house of accused (brother-in-law). She ~~went for~~ (was) sleeping in the verandah of the house of the accused where the accused along with his wife Banjami Mitki and children were sleeping inside the house. At about 11.30 p.m. in the night, she heard the commotion on which she woke up and she saw that the accused was beating his wife with hands and fists. When she tried to intervene, accused slapped her also as a result of which she received injuries and thereafter accused pressed the neck of his wife Banjami Mitki as a result of which she died on the spot. This witness is close relative of the accused and there is no reason for her to implicate her brother-in-law in a false case. In the cross-examination of this witness, defence has not been able to elicit any circumstance

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मामला क्रमांक C.R.A. 2931/2000 सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -5-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

which makes the evidence of this witness unreliable or untrustworthy. Moreover, the evidence of this witness has been corroborated by the medical evidence of Dr. Rajendra Sharma (PW/6) who conducted postmortem on the body of Banjami Mitki on the very next day. He has stated in his evidence that there were abrasions on the neck which were sustained by pressing of neck and cause of death was shock & asphyxia due to throttling. His report is Ex.P/10. Therefore, the medical evidence corroborates the evidence of eye-witness. Moreover, the minor son of the accused & the deceased, namly Gopi (PW/9) has categorically stated that eye-witness Banjami Mitki (PW/1) had come to their house and when she tried to intervene, she was slapped in the house by the accused. Therefore, presence of PW/1 is estabnlished by the evidence of PW/9 Gopi. In view of the ocular evidence and medical evidence, it is established that the accused was the author of the crime in question.

Learned counsel for the accused/appellant argued that from the evidence, it is not established that accused had any motive or intention to commit the murder.

As far as motive is concerned, it is very difficult to know the motive of the accused what was working in his mind to commit the crime. Moreover, motive becomes irrelevant when there is a direct

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आदेश पत्रक

मामला क्रमांक ..... C.A. 2931/2000 ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित ~6~	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

evidence regarding commission of the crime. As far as intention is concerned, it is also very difficult to know as to what was happening in the mind of the accused. Intention can be gathered from the facts and circumstances of the case, the manner in which the accused committed the crime, the weapon of the offence used, the part of body of deceased where the accused assaulted the deceased. In the present case, as per the evcience of PW/1 Banjami Mitki, accused pressed the neck of the deceased, thereby the deceased was not able to breath and on account of that she died instantaneously. Pressing of the neck in such a manner that the deceased was not able to breath shows the intention of the accused that he pressed the neck of the deceased to that extent which resulted into the death of the deceased. Therefore, intention of the accused was writ large to commit the murder of Banjami Mitki.

In the circumstances, we do not find any illegality or infirmity in the judgment of the trial Court convicting and sentencing the accused under Section 302 of the IPC.

In the result, the appeal is devoid of merit and same is dismissed.

Sd/-
L.C. Bhadoo
Judge

Sd//-
V.K.Shrivastava
Judge

Raju

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